



General Assembly

February Session, 2000

Amendment

LCO No. 4308

Offered by:

REP. LAWLOR, 99th Dist.

To: Subst. House Bill No. 5780

File No. 468

Cal. No. 368

"An Act Concerning Execution Upon Funds Which Are Exempt From Attachment."

1 Strike out everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (a) of section 52-351b of the general statutes is
4 repealed and the following is substituted in lieu thereof:

5 (a) A judgment creditor may obtain discovery from the judgment
6 debtor, or from any third person [he] such judgment creditor
7 reasonably believes, in good faith, may have assets of the judgment
8 debtor, or from any financial institution to the extent provided by this
9 section, of any matters relevant to satisfaction of the money judgment.
10 The judgment creditor shall commence any discovery proceeding by
11 serving an initial set of interrogatories, in a prescribed form containing
12 such questions as to the assets and employment of the judgment
13 debtor as may be approved by the judges of the Superior Court or their
14 designee, on the person from whom discovery is sought. Service of an
15 initial set of interrogatories relevant to obtaining satisfaction of a
16 money judgment of a small claims session of the Superior Court may

17 be made, upon request of the judgment creditor, by the clerk of the
18 court sending such interrogatories by certified mail, return receipt
19 requested, to the person from whom discovery is sought, provided the
20 judgment creditor pays to such clerk a fee of five dollars for each
21 mailing requested. Questions contained in the interrogatory form shall
22 be in clear and simple language and shall be placed on the page in
23 such manner as to leave space under each question for the person
24 served to insert [his] such person's answer. Such person shall answer
25 the interrogatories and return them to the judgment creditor within
26 thirty days of the date of service. Interrogatories served on a judgment
27 debtor shall be signed by such debtor under penalty of false statement.
28 With respect to assets, the person served is required to reveal
29 information concerning the amount, nature and location of the
30 judgment debtor's nonexempt assets up to an amount clearly sufficient
31 in value to ensure full satisfaction of the judgment with interest and
32 costs, provided disclosure shall be first required as to assets subject to
33 levy or foreclosure within the state. If interrogatories are served on a
34 financial institution, the financial institution shall disclose only
35 whether it holds funds of the judgment debtor on account, [and] the
36 balance of such funds [,] up to the amount necessary to satisfy the
37 judgment and the amount of electronic direct deposits of readily
38 identifiable exempt government benefits deposited to the debtor's
39 account during the thirty-day period preceding the date that the
40 interrogatories were served on the financial institution.

41 Sec. 2. Section 52-367b of the general statutes is repealed and the
42 following is substituted in lieu thereof:

43 (a) Execution may be granted pursuant to this section against any
44 debts due from any banking institution to a judgment debtor who is a
45 natural person, except to the extent such debts are protected from
46 execution by sections 52-352a, 52-352b, 52-352c, of the general statutes
47 revised to 1983, 52-354 of the general statutes revised to 1983, 52-361 of
48 the general statutes revised to 1983 and section 52-361a, as well as any
49 other laws or regulations of this state or of the United States which
50 exempt such debts from execution.

51 (b) If execution is desired against any such debt, the plaintiff
52 requesting the execution shall notify the clerk of the court. On
53 application of a judgment creditor or the judgment creditor's attorney,
54 stating that a judgment remains unsatisfied and the amount due
55 thereon, and subject to the expiration of any stay of enforcement and
56 expiration of any right of appeal, the clerk of the court in which the
57 money judgment was rendered shall issue an execution pursuant to
58 this section against the nonexempt debts due from a banking
59 institution. In the case of a consumer judgment, the application shall
60 indicate whether, pursuant to an instalment payment order under
61 subsection (b) of section 52-356d, the court has entered a stay of
62 execution and, if such a stay was entered, shall contain a statement of
63 the judgment creditor or the judgment creditor's attorney as to the
64 debtor's default on payments. In a IV-D case, the request for execution
65 shall be accompanied by an affidavit signed by the levying officer
66 attesting to an overdue support amount of five hundred dollars or
67 more which accrued after the entry of an initial family support
68 judgment. If the papers are in order, the clerk shall issue such
69 execution containing a direction that the officer serving the same shall,
70 within seven days from the receipt by the officer of such execution,
71 make demand (1) upon the main office of any banking institution
72 having its main office within the county of such officer or (2) if such
73 main office is not within such officer's county and such banking
74 institution has one or more branch offices within such county, upon an
75 employee of such a branch office, such employee and branch office
76 having been designated by the banking institution in accordance with
77 regulations adopted by the Commissioner of Banking in accordance
78 with chapter 54, for payment of any such nonexempt debt due to the
79 judgment debtor and, after having made such demand, shall serve a
80 true and attested copy of the execution, together with the affidavit,
81 [and] exemption claim form and notice prescribed by subsection [(k)]
82 (l) of this section, with [his] the officer's doings endorsed thereon, with
83 the banking institution officer upon whom such demand is made. The
84 execution, affidavit and exemption claim form shall be accompanied
85 by a notice in clear and simple language of judgment debtor rights,

86 including a statement of the right of the judgment debtor to request an
87 instalment payment order staying execution pursuant to section 52-
88 356d and a statement that, pursuant to section 52-212, a judgment
89 debtor may, for reasonable cause, move that the judgment be set aside
90 within four months of rendition.

91 (c) If any such banking institution upon which such execution is
92 served and upon which such demand is made is indebted to the
93 judgment debtor, it shall remove from the debtor's account the amount
94 of such indebtedness not exceeding the amount due on such execution
95 before its midnight deadline, as defined by section 42a-4-104. If direct
96 deposits of government benefits that are readily identifiable as exempt
97 under subsection (a) have been made to the debtor's account during
98 the thirty-day period preceding the date that the execution was served
99 on the banking institution, then the banking institution may exclude
100 from the amount to be removed from the judgment debtor's account an
101 amount equal to such direct deposits of such government benefits
102 made during such thirty-day period plus one thousand dollars, not to
103 exceed a total of two thousand dollars. Nothing in this subsection shall
104 alter the exempt status of funds which are exempt from execution
105 under subsection (a) of this section or under any other provision of
106 state or federal law or the right of a judgment debtor to claim such
107 exemption.

108 (d) Upon receipt of the execution, [and] exemption claim form and
109 notice of rights from the serving officer, the banking institution shall
110 forthwith mail copies thereof, postage prepaid, to the judgment debtor
111 at [his] the last known address of the judgment debtor with respect to
112 the affected accounts on the records of the banking institution. No
113 notice shall be required if the execution is returned to the levying
114 officer unsatisfied. The institution shall hold the amount removed
115 from the debtor's account pursuant to subsection (c) of this section for
116 fifteen days from the date of the mailing to the judgment debtor and
117 during such period shall not pay the serving officer.

118 (e) To prevent the banking institution from paying the serving

119 officer, as provided in subsection (h) of this section, the judgment
120 debtor shall give notice of a claim of exemption by delivering to the
121 banking institution, by mail or other means, the exemption claim form
122 or other written notice that an exemption is being claimed. The
123 banking institution may designate an address to which the notice of a
124 claim of exemption shall be delivered. Upon receipt of such notice, the
125 banking institution shall, within two business days, send a copy of
126 such notice to the clerk of the court which issued the execution.

127 (f) Upon receipt of an exemption claim form, the clerk of the court
128 shall enter the appearance of the judgment debtor with the address set
129 forth in the exemption claim form. The clerk shall forthwith send file-
130 stamped copies of the form to the judgment creditor and judgment
131 debtor with a notice stating that the disputed assets are being held for
132 forty-five days from the date the exemption claim form was received
133 by the banking institution or until a court order is entered regarding
134 the disposition of the funds, whichever occurs earlier, and the clerk
135 shall automatically schedule the matter for a short calendar hearing.
136 The claim of exemption filed by [such] the judgment debtor shall be
137 prima facie evidence at such hearing of the existence of the exemption.

138 (g) If an exemption claim is made pursuant to subsection (e) of this
139 section, the banking institution shall continue to hold the amount
140 removed from the judgment debtor's account for forty-five days or
141 until a court order is received regarding disposition of the funds,
142 whichever occurs earlier. If no order is received within forty-five days
143 of the date the banking institution sends a copy of the exemption claim
144 form or notice of exemption to the clerk of the court, the banking
145 institution shall return the funds to the judgment debtor's account.

146 (h) If no claim of exemption is received by the banking institution
147 within fifteen days of the mailing to the judgment debtor of the
148 execution and exemption claim form pursuant to subsection (d) of this
149 section, the banking institution shall, upon demand, forthwith pay the
150 serving officer the amount removed from the judgment debtor's
151 account, and the serving officer shall thereupon pay such sum, less

152 [his] such officer's fees, to the judgment creditor, except to the extent
153 otherwise ordered by a court. Failure of the judgment debtor to give
154 notice of a claim of exemption to the banking institution within fifteen
155 days of the date of the mailing shall not preclude the judgment debtor
156 from recovering exempt funds from the judgment creditor.

157 (i) If, pursuant to subsection (c) of this section, the banking
158 institution returns the execution to the levying officer fully or partially
159 unsatisfied, the judgment creditor may, on an ex parte basis, present
160 evidence to a judge of the Superior Court that such debtor's account
161 contains funds which are not exempt from execution, notwithstanding
162 the return of the execution to the levying officer by the banking
163 institution, which shall be prima facie evidence that the account
164 contains exempt funds. If such judge finds probable cause to believe
165 that such debtor's account contains funds which are not exempt from
166 execution, such judge shall issue an execution against the nonexempt
167 debts due from such banking institution in the amount for which
168 probable cause to believe that they are nonexempt was found by the
169 judge, not to exceed the unsatisfied portion of the execution. The
170 judgment creditor may cause the execution to be served pursuant to
171 subsection (b) of this section and the banking institution shall proceed
172 pursuant to subsections (c) to (h), inclusive, of this section as to such
173 funds against which execution has been authorized, provided the
174 banking institution shall not exclude from the funds to be removed
175 pursuant to subsection (c) from the judgment debtor's account any
176 funds which the court has found probable cause to believe are not
177 exempt.

178 [(i)] (j) The court, after a hearing conducted pursuant to subsection
179 (f) of this section, shall enter an order determining the issues raised by
180 the claim of exemption. The clerk of the court shall forthwith send a
181 copy of such order to the banking institution. Such order shall be
182 deemed to be a final judgment for the purposes of appeal. No appeal
183 shall be taken except within seven days of the rendering of the order.
184 The order of the court may be implemented during such seven-day
185 period, unless stayed by the court.

186 [(j)] (k) If both exempt and nonexempt moneys have been deposited
187 into an account, for the purposes of determining which moneys are
188 exempt under this section, the moneys most recently deposited as of
189 the time the execution is levied shall be deemed to be the moneys
190 remaining in the account.

191 [(k)] (l) The exemption claim form, execution and clerk's notice
192 regarding the filing of a claim of exemption shall be in such form as
193 prescribed by the judges of the Superior Court or their designee. The
194 exemption claim form shall be dated and include a checklist and
195 description of the most common exemptions, instructions on the
196 manner of claiming the exemptions, and a space for the judgment
197 debtor to certify those exemptions claimed under penalty of false
198 statement.

199 [(l)] (m) If records or testimony are subpoenaed from a banking
200 institution in connection with a hearing conducted pursuant to
201 subsection (f) of this section, the reasonable costs and expenses of the
202 banking institution in complying therewith shall be recoverable by it
203 from the party requiring such records or testimony, provided, the
204 banking institution shall be under no obligation to attempt to obtain
205 records or documentation relating to the account executed against
206 which are held by any other banking institution. The records of a
207 banking institution as to the dates and amounts of deposits into an
208 account in such institution shall, if certified as true and accurate by an
209 officer of the banking institution, be admissible as evidence without
210 the presence of the officer in any hearing conducted pursuant to
211 subsection (f) of this section to determine the legitimacy of a claim of
212 exemption made under this section.

213 [(m)] (n) If there are moneys to be removed from the debtor's
214 account, prior to the removal of such moneys pursuant to subsection
215 (c) of this section the banking institution shall receive from the serving
216 officer as representative of the judgment creditor a fee of eight dollars
217 for its costs in complying with the provisions of this section which fee
218 may be recoverable by the creditor as a taxable cost of the action.

219 [(n) If] (o) Except as otherwise provided in this section, if the
220 banking institution fails or refuses to pay over to the serving officer the
221 amount of such debt, not exceeding the amount due on such execution,
222 such banking institution shall be liable in an action therefor to the
223 judgment creditor named in such execution for the amount of
224 nonexempt moneys which it failed or refused to pay over, and the
225 amount so recovered by such judgment creditor shall be applied
226 toward the payment of the amount due on such execution. Thereupon
227 the rights of the banking institution shall be subrogated to the rights of
228 the judgment creditor. If such banking institution pays exempt moneys
229 from the account of the judgment debtor over to the serving officer
230 contrary to the provisions of this section, such banking institution shall
231 be liable in an action therefor to the judgment debtor for any exempt
232 moneys so paid. Thereupon the rights of the banking institution shall
233 be subrogated to the rights of the judgment debtor.

234 [(o)] (p) Except as provided in subsection [(n)] (o) of this section, no
235 banking institution or any officer, director or employee thereof shall be
236 liable to any person with respect to anything done or omitted in good
237 faith in complying with the provisions of this section.

238 [(p)] (q) Nothing in this section shall in any way restrict the rights
239 and remedies otherwise available to a judgment debtor at law or in
240 equity.

241 [(q)] (r) Nothing in this section shall in any way affect any rights of
242 the banking institution with respect to uncollected funds credited to
243 the account of the judgment debtor, which rights shall be superior to
244 those of the judgment creditor.

245 [(r)] (s) For purposes of this subsection, "exempt" shall have the
246 same meaning as in subsection (c) of section 52-352a. Funds deposited
247 in an account that has been established for the express purpose of
248 receiving electronic direct deposits of public assistance payments from
249 the Department of Social Services shall be exempt."